Jackson's Throttlebottom-Style Debut, P. 2

When An Evasion Is As Good As An Answer

Q. A recent Harris poll indicated that the American people would like to see our troops out of Vietnam by May 1. I think the vote was about 3-to-1. Do you think there is even a slight possibility that we could get them all out by then?

A. Since I have been Secretary of Defense, I have refused to make projections or forecasts.—*Laird on* Meet the Press *two days after Nixon's latest troop withdrawal announcement.*

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What Rehnquist Saw As A Black Day In The Court

Our Committee . . . limits its conclusions to the professional competence, judicial temperament, and integrity of the nominee . . . We recognized, however, that in the selection of a person for the Supreme Court by the President, and the consideration of that selection by the Senate, there are involved other factors of a broad political and ideological nature.

—ABA Committee letter to Senate Judiciary Nov. 2 unanimously approving the nomination of Louis F. Powell.

The real question is: can this country afford, at this perilous time, an individual on the court with an ideology so out of tune with the times that if his philosophy should prevail, even in part, it would tear at the slender threads now holding us together? Make no mistake about it, the Court is viewed as the last hope by millions of Americans and especially blacks and other oppressed minorities.

—Rep. Conyers of Detroit, testifying against the Rehnquist nomination for the Black Congressional Caucus.

You tell a Senator that Rehnquist doesn't really believe in the Bill of Rights nor in civil rights and he asks you, "What have you got damaging on him?"

—Civil rights lawyer in off-the-record disgust.

By the standards of civil libertarians, June 17, 1957, was one of the greatest days in the history of the U.S. Supreme Court. By the standards of William H. Rehnquist it was the worst. An examination of the decisions the Court handed down that day indicates the kind of "conservatism" he would bring to the Court. One of his attacks on the Warren Court was an article he wrote for the *American Bar Association Journal* (44ABAJ229) in 1958. It began, "Communists, former Communists and others of like political philosophy scored significant victories during the October 1956 term of the Supreme Court, culminating in the historic decisions of June 17, 1957." Joseph L. Rauh, Jr. called attention in his testimony on Rehnquist before the Senate Judiciary Committee to the four historic decisions handed down by the Court that day in the field of civil liberties. Mr. Justice Harlan, the great conservative whom Rehnquist has been named to succeed, wrote two of those decisions and concurred in the other two. He must certainly be surprised, on his hospital sick bed, to hear them described as victories for Communists rather than for strict construction of the Bill of Rights.

It is a pity that a clash between Rauh and Senator Kennedy over Rehnquist's affidavit of non-membership in the Birch Society distracted attention from Rauh's exposition of those four cases. To compare these decisions with Rehnquist's description is to see how far to the right are his political preconceptions. Only one of them dealt with Communists at all. That was the Yates decision (354 US 298) where Mr. Justice Harlan reversed the conviction of the California Communist leaders and held that advocacy of revolutionary doctrine was protected by the First amendment unless accompanied by advocacy of action. This decision was, to all intents and purposes, the deathblow to the Smith Act, our first peacetime sedition statute since the Alien and Sedition laws of John Adams. The other decision by Harlan was a landmark case in the field of loyalty and security. It ended (354 US 123) the long and shameful harassment of John Stewart Service inspired by the China lobby, and it ordered his restoration to the State Department.

Two other decisions that day were also setbacks to the witch hunt of the 50s. *Watkins v. U.S.* (354 US 295), which Rauh argued for the defense, was the first major setback to the Un-American Activities Committee. The Court reversed the contempt conviction of an Auto Workers' official. Warren (with Harlan and Frankfurter) held that Congress had no power of "exposure for exposure's sake." The fourth case, *Sweezy v. New Hampshire* (354 US 239) was a victory for academic freedom against a State witch hunt. Warren and

(Continued On Page Four)

Now You See It Now You Don't Dept.

Q. Can you tell us if you now, as a result of this two month withdrawal, foresee an end to the U.S. combat role in Vietnam? . . .

A. Well, the combat role, let us understand, based on the casualties, as far as the offensive situation is concerned, is already concluded.

—Nixon's press conference of November 12.

Q. Our strategy is really moving away from the ground role or the ground combat role that is already over, but increasingly relies upon air . . .

A. I think that term is used very loosely. We have turned over the ground combat responsibility in Phase I to the forces of the South Vietnamese. Now our particular forces that are stationed in Vietnam today, as we turn over air, artillery and logistics, we will be conducting some security missions, because I think it is absolutely essential that our forces that are there are protected adequately, and so it is the ground combat responsibility in the country that has been turned over, but there will be a ground combat role for some of the forces in a security mode.

—Defense Secretary Laird on Meet the Press *Nov. 14.*

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Washington Ready As Pnom Penh To Ignore "The Sterile Game of Democracy"

In 1969 Jackson was Nixon's choice for Secretary of Defense. In 1971 he is the favorite of the hardliners: the military-industrial complex, the Zionist lobby, the AFL-CIO bureaucracy. On foreign policy he is to the right of Nixon; on domestic, he stands everywhere and nowhere, including "law and order," his No. 1 theme. In announcing his candidacy, he promised over and over again to "tell it like it is." But his prepared statement sounded like Throttlebottom for President; it didn't miss a cliché; it didn't have one simple, honest word about any real problem; it turned up on both sides of most issues. A sample: "I don't believe we should play world cop. But let me be blunt: I don't believe we should cop out on the world." You can't get much blunter than that. On the economy, he spoke only of making jobs. But he didn t say how, or how to deal with inflation. You have to read the prepared text to get the full corny flavor. It's unbelievable.

Terror From The Skies

Like Humphrey, Jackson supports Nixon's policy of keeping a residual force in Indochina indefinitely—with unlimited air support—as a "bargaining tool" for the release of the POWs. Neither Humphrey, in his comment on Nixon's latest troop withdrawal announcement of November 12 nor Jackson at his press conference explained how you can get an enemy to release imprisoned aviators when the main tool of policy is still the Lyndon Johnson formula of beating-the-hell-out-of-them from the air. A Cornell study shows that Nixon in three years has dropped more bombs on Indochina than Johnson did in the three years before the bombing pause. Though terror from the skies hasn't worked, it goes mindlessly on. Hanoi's negotiators in Paris have said that release of POWs would begin once we begin to implement a total withdrawal date. But Nixon's real concern is to protect his political flank on the right by keeping a satellite regime in power in Saigon, as Humphrey and Jackson are with the hard-line core of Democratic leadership which shares this objective, which was Johnson's as it is Nixon's.

The war to make Indochina safe for democracy rings up one political victory after another—Cambodia and Thailand have dropped democratic facades in the wake of Thieu's rubber-stamp election. In Washington, the Republican-Democratic leadership seems as firm as Lon Nol against "the sterile game of liberal democracy." In the wake of Harris polls showing that 62% of the American public favors total withdrawal by next May and that 65% believe it is morally wrong for us to be fighting in Vietnam, the Ed Boland amendment to cut off funds for the war was defeated in the House by 238 to 163. Though 60% of the Democrats voted for it, the leadership joined hands with Republicans and Southern Democrats to defeat the measure.

Speaker Albert voted "no". Majority Leader Boggs abstained. The maverick whip, O'Neill of Massachusetts, voted "yea" but of the 21 Democratic committee chairmen 16 voted "nay" and only one, Garmatz of Baltimore, voted for the anti-war amendment (he has a peace candidate breathing down his neck). The vote showed a rise of 4 points from the vote on the Nedzi-Whalen cutoff last June which got 56% of the Democrats. At this rate popular feeling may finally make itself felt in "the sterile game of liberal democracy" by 1978 or thereabouts. In the meantime, Nixon, in signing the new military procurement bill, announced that he would ignore the Mansfield rider calling on him to end American involvement "at a date certain." Majority rule is doing as poorly here as in Indochina.

McGovern in a five minute TV broadcast said "four billion dollars—the cost of bombing Vietnam this year—would build a good school or health clinic in 3,000 of our cities and still leave one billion dollars to strengthen the income of hard-pressed family farmers." The country may be listening but the Democratic party leadership isn't, though new dry season offensives may soon up the cost of the war in money and blood.

How The High Brass Proliferates

There are more three and four star generals and admirals in uniform today than there were at the height of World War II. . . . At the peak of the Korean War we had 3.6 million men in uniform and today we have only 2.7 million. However, we have 190 more Generals and Admirals today than we had at the height of the Korean War. . . . Much of this proliferation of high ranking officers results from the assigning of military men to traditionally civilian jobs. Every few years the Dept. of Defense announces a "Civilianization" program . . . However what has evidently happened over the years is a rather rapid and drastic "Civilianization in reverse" or "Militarization" of many of the higher level civilian jobs . . . Not only do some high ranking officers cost more in terms of salary and benefits but there is the added cost of first having to train them for a new job.

—House Appropriations on the 1972 defense budget.

U.S. Analysts In Saigon Do Not Share Washington's Optimism About Vietnam

In Washington the view on Vietnam is more optimistic than that held here. "I think South Vietnam has a pretty good chance of surviving because I just don't see how the North Vietnamese can keep going," a senior U.S. official says. But another analyst puts it differently: "I would be optimistic if it weren't for the dreadful ebullience of the enemy." How North Vietnam—which President Johnson once called "a raggedy-ass little country"—has been able to keep fighting this long against America's military might has confounded waves of U.S. war planners. The betting here seems to be that Hanoi will confound some more.

The South Vietnamese seem increasingly embittered. The toll of combat deaths last week was down to two Americans, but the toll of South Vietnamese was 269. South Vietnamese casualties this year are running ahead of 1968. More and more Vietnamese are talking about a "Vietnamese solution to a Vietnamese war." Even some traditionally anti-Communist Catholic priests are talking in this vein and so are some younger army officers.

Officials also worry that an increasingly unpopular President Thieu will isolate himself further, that he will be more suspicious, more repressive, less willing or able to deal with the moral malaise that infects this society. Even without any abrupt change in U.S. policy, Thieu's position may get shakier. American influence with the ARVN generals is mostly based on American aid to fuel their patriotism and fatten their pocketbooks. As U.S. aid declines, so may ARVN loyalty to America's man Thieu.

Vietnam's economy, after years of inflationary crisis, now is something of a success story. The longer range outlook is gloomier. For as far as anyone here is willing to peer into the future, Vietnam will be a beggar nation. The general view here is that without continued American assistance at roughly the present level, the economy would collapse.—*Peter R. Kann from Saigon in the* Wall Street Journal *Nov 11 (abridged).*

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Another Shakeup In Intelligence—But Will It Really Make Much Difference?

Intelligence operations of the Dept. of Defense have grown beyond actual needs of the Dept. and are now receiving an inordinate share of its fiscal resources . . . The same information is sought and obtained by various means and organizations . . . Far more material is collected than essential. Material is collected which cannot be evaluated in a reasonable length of time and is therefore wasted.

—House Appropriations report (No. 92-666) on the 1972 Defense budget explaining why it cut $181,000,000 from the classified request for intelligence activities. The CIA is largely financed from these same secret Pentagon funds. In addition the Committee cut $49.4 million "in certain classified activities."

Our sprawling intelligence establishment seems to be costing more and producing less—less of value, that is. House Appropriations complains that despite promised economies, the Pentagon's 1972 intelligence requests were higher than ever. This dim view seems to be shared by the White House. On Nov. 5, over Pentagon objections, it ordered a reshuffle of intelligence agencies and their centralization under a new National Security Council Intelligence Committee chaired by Henry Kissinger. The White House release said this would provide "a continuing evaluation of intelligence products from the viewpoint of the intelligence user."

The "Consumer" Is Irate

The principal "user", and irate consumer, seems to be Nixon himself. White House dissatisfaction was reflected in *U.S. News & World Report* (Nov. 22). "Too often," it reported, "the President has been inundated with information he does not need, or fails to receive in sufficient quality or quantity the data he considers vital." Most recent example, "one White House aide disclosed, was unhappiness over the time it took to get reliable intelligence on current developments in Red China." A network which costs between $5 and $6 billion a year, one surmises, proved no better than Hongkong press scuttlebutt, though hard information (on Lin Piao's eclipse, for example) is essential for the forthcoming trip to Peking. Also resented: the failure of the Sontay raid and incorrect forecasts on Hanoi's reaction to last spring's invasion of Laos.

The reorganization, without consulting Congress, brought protest from Fulbright and Symington, both angry over their inability to get information on secret CIA activities in Laos and Cambodia. Both expressed the fear that putting Kissinger in charge would mean more refusals of information, this time on the plea of executive privilege. Symington, a member for 15 years of an Armed Services subcommittee supposed to oversee CIA activities, protested that this subcommittee has not met even once this year.

Educational Footnote

Through a professor secretly on the CIA payroll as a talent scout, Marchetti netted the prize all would-be spies dream of—an immediate job offer from the CIA.

—From a UPI interview by Edward K. DeLong with Victor Marchetti, who quit the CIA in disenchantment after 14 years. Full text reprinted in the U.S. News & World Report *Oct. 11. Marchetti's "The Rope Dancer", a novel about the Vietnam war and Russian strategic advances as seen from within the intelligence apparatus has just been published.*

There are no professors secretly on the CIA's payroll, although some have assisted the Agency in spotting individuals who might qualify for intelligence work abroad.

—From the rebuttal in the same issue of USN&WR by Lyman B. Kirkpatrick, Jr., now professor of political science at Brown, who was with the CIA from 1947 to 1965, rising to Executive Director-Comptroller.

"How can the integrity of the intelligence product be assured," Symington asked the Senate Nov. 10, "when responsibility for the most critical aspects of intelligence analysis is taken out of the hands of career professionals and vested in a combination of military professionals and the White House staff?" Imagine what Rostow would have done to intelligence on the Vietnam war with the powers now given Kissinger!

A resolution (S. Res. 192) to set up a select Senate committee to oversee all departmental activities abroad, whether by the military, the foreign service or intelligence agencies, was introduced by Symington Nov. 13. The committee would be made up of three Senators each from Foreign Relations and Armed Services. It would meet at least once a month and have subpena powers. The resolution reflects the exasperated recognition that the Senate's constitutional power over foreign relations is made a nullity by secret activities which determine issues of war and peace without its knowledge. But the resolution recalls Senator Mansfield's unsuccessful efforts over the past decade to create a special committee to oversee CIA activities. The chances of passage, this late in the session, do not look good. The truth, if it were fully known, would show (we believe) that not only Congress but even the White House—and probably the nominal heads of CIA and the other gumshoe agencies—cannot really control so well-heeled and far-flung a secret establishment. This is a tail bound to wag the dog. The only remedy is to clip it off.

A "Defector's" Expose of Secret CIA Shenanigans—and The Agency's Rebuttal

Marchetti said areas where the CIA might launch future clandestine paramilitary activities include South America, India, Africa and the Philippines—all places in the throes of social upheaval. Upheaval, he said, is what prompts the CIA Director to begin planning possible clandestine activities in a country. "That is so if the President says, 'Go in and do something'; he's already got his fake airlines to fly in people. He may have a program going with the police in this country or the military in that."

In addition to Air America, Marchetti said, the CIA has set up both Southern Air Transport in Miami and Rocky Mountain Air in Phoenix for possible use in paramilitary operations in South America. Similar fake airlines have been bought and sold all over the world, he said, including one in Nepal and another in East Africa.

He also said the CIA has a big depot in the Midwest United States "where they have all kinds of military equipment, all kinds of unmarked weapons. Over the years they have bought everything they can get their hands on all over the world that is untraceable—to prepare for the contingency that they might want to ship arms to a group in a place like Guatemala," Marchetti said. "They even used to send weapons buyers around to buy arms from the (Soviet) bloc countries."

—From the same interview quoted in the box above.

As far as the depots of "untraceable arms", airlines and other installations are concerned, one wonders how the CIA could accomplish the tasks required of it in Southeast Asia without such facilities. Or perhaps it is being suggested that the Communists should be allowed to ignore the 1962 Geneva Accord and take over Laos without a struggle.

—From the rebuttal quoted in the same box.

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(Continued from Page One)

the majority ruled as they did in Watkins but Harlan and Frankfurter took a stronger position, voting for reversal on First Amendment grounds. Paul Sweezy, an editor of *Monthly Review*, is an independent Marxist of international reputation. These are the decisions Rehnquist found so deplorable.

The Brown Decision: His No. 1 Target

Rehnquist's twin passions in his attacks of the late 50s on the Court were the witch hunt and school segregation. Much attention has been focussed on the article he wrote for the *Harvard Law Record* of October 8, 1959 urging the Senate to restore "its practice of thoroughly informing itself on the judicial philosophy of a Supreme Court nominee before voting to confirm him." Less attention has been given the animus he displayed in that article against the historic Brown decision for school integration. Rehnquist protested that in confirming Mr. Justice Whittaker, the Senate had failed to inquire what he "thought about the Supreme Court and segregation or about the Supreme Court and Communism."

As recently as Feb. 14, 1970 Rehnquist defended Carswell's anti-integration record and sneered in a letter to the *Washington Post* that it was attempting to set up "a rather detailed catechism of civil rights decisions" as "the equivalent of subscription to the Nicene creed for the early Christians." But he wanted a catechism-in-reverse to make sure that nominees were hostile to school integration.

It is ironic that Rehnquist, who argued little more than a decade ago for the fullest inquiry into the political opinions of Court nominees, should have resisted inquiry into his own in the hearings on his nomination. He declined to give his opinion on the constitutionality of the Mansfield amendment, on the power of Congress to cut off funds for war, on the circumstances under which newspapers may be subjected to prior restraint, i.e. censorship, on whether he thought individual freedoms more important than property rights, on what constitutes reasonable search and seizure, on what bail is excessive, on what school boards should do instead of bussing when taxes cannot be increased to provide quality education.

At times, as on wire-tapping, preventive detention, no-knock police entry, FBI surveillance of demonstrations, bugging, and the equal rights amendment, Rehnquist came up with a new doctrine for evasion. He claimed the right to silence because of a client-attorney relationship with the government on these issues. This evoked a letter from 19 of the 26 members of the Catholic University Law School to the Judiciary Committee in which they asserted, "The attorney-client privilege is not the attorney's. It is for the protection of, and belongs to, the client." They argued furthermore that Rehnquist's client as a Justice Department official was "the people and not the President." They said no nominee before had ever made such a claim "against the Senate's right to know." Certainly Rehnquist never advocated any such doctrine when he wanted to block or reverse the liberal rulings of the Warren court by stricter Senate inquiry into the beliefs of Court nominees. His nomination and Powell's are two major steps toward the conversion of the Court into a citadel of reactionary jurisprudence.

Now You See It Now You Don't Dept.

If the situation is such that we have a negotiated settlement, naturally that means a total withdrawal of all American forces. It also not only means . . . a discontinuation of our air strikes and also withdrawal of forces stationed in other places in Southeast Asia or in the Asian theatre that are directly related to the support of our forces in Vietnam.

—Nixon at press conference November 12.

Q. Isn't it true that as long as war continues and we want to support the South Vietnamese government, American air power will be necessary far into the future?

A. In the defense report which I made to the Congress this year, I tried to point out that we would be continuing air and sea power . . . This idea that somehow or other the Nixon Doctrine means that we will not have air or sea power in Asia is a great mistake because that isn't part of the partnership . . . We are trying to build up through our military assistance program those forces to handle many of the military situations, but in the air and sea certainly we will have a presence in Asia for some time to come.

—Secretary Laird on Meet the Press *Nov. 14.*

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